COMMISSIONERS PROCEEDINGS
WEDNESDAY, AUGUST 2, 2006
CLARK COUNTY, WASHINGTON

The Board convened in the Commissioners' Hearing Room, 6th Floor, Public Service Center, 1300 Franklin Street, Vancouver, Washington. Commissioners Stuart, Morris, and Boldt, Chair, present.

1:30 P.M.

PUBLIC MEETING: HARRIS METAL FAB HOME OCCUPATION APPEAL – APL2006-00001

Held a public meeting to consider an appeal of the Clark County Land Use Hearing Examiner's decision regarding the appeal of a home business permit for metal fabrication in the R-5 zone.

The Board of Commissioners did not receive public comment, oral or written, at this public meeting.

The board certified reading the record.

Travis Goddard, Department of Community Development, provided a brief summary of the case. Mr. Goddard said he was the planner for the original home occupation permit, which came in as a Type I home occupation permit that he made the original decision on.

Morris said she didn't find that in the record or the DVD.

Goddard said it's Exhibit 6. He explained that the home occupation application is actually both an application form and an approval form in a single document. He said the home occupation Type I's are a streamline process in which the application itself is set up for the initial blocks, which say "we agree to operate within these perimeters" and they initial each box as an agreement to operating under those conditions.

Morris asked if that required some sort of stamp of approval from the county.

Goddard said it does. He said at the bottom of the form there is a signature block and conditions of approval blanks that he fills in as he's reviewing it.

Morris said that wasn't in her book.

Boldt said they only have the first page.

Goddard thought that might have been an oversight in putting the record together.

Boldt asked if the applications were the same for Type I and Type II.

Goddard said no and further explained.

Morris stated that she wasn't able to find the factual evidence in the record that the applicant had a Type I home occupation permit. She said the respondent's letter stated that Mr. Harris already had a minor home occupation permit and, therefore, no harm was done. She said she didn't find any evidence in the record that there was one, in which case that would have been an unsubstantiated statement.

Goddard said he had misspoken and that the second permit the Harris' are currently working under is a Type I application. He said it was originally a Type II application.

Stuart asked if that was anywhere in the record.

Goddard said it didn't appear so. He said the home occupation permit was approved and then appealed by the appellant, whose argument was based on two issues: that the staff had erroneously attributed to the right-of-way to the lot area and that staff had erroneously applied the de minimis standard for meeting the zoning standard for lot size. The hearings examiner agreed with the appellant and overturned the staff decision based on there being insufficient lot area to allow for the approval of a home occupation permit. That decision was subsequently appealed by the applicant.

Boldt asked about the 2.49 acres.

Goddard said information in the record, which is based upon the deed the applicant submitted, showed they had 2.49 acres, including the right-of-way. He said their normal procedure is to consider the two discussions, which are inclusion of the right-of-way for rural zoning and the de minimis standard, which is either a 1% or 10% variance. In this case, the 2.49 is within 1% so they accepted it as a standard that would allow a home occupation to be approved.

Morris said factually there are different sets of dimensions in the record and the question is, under their code how do you interpret the different sets of dimensions. She said it becomes a question of the law and how the law is intended to interpret the facts. In this instance, it has to do with whether or not you measure the dimension of the lot from the center line of the roadway or you measure it from the edge. Staff's historical interpretation of the code language is that in the rural areas you measure it from the center line of the road. She said another legal issue was whether the dimensional requirements in the home occupation ordinance are intended to supersede the common standard for measurement of lot size as called forth in earlier sections of Title 40. She said it was not the board's intention at the time that they be any different than normally accepted procedures for calculating lot size. Historically, the dimension of the right-of-way has been included in the lot size and from her viewpoint that would continue to be the way the calculation is considered for the lot size. Morris said that from her perspective the law was

necessary here to calculate the facts of the matter and the facts of the matter are that it is the larger of the dimensions that does include the center line of the road. She stated that she would find for the appellant and overturn the hearings examiner because the most usual standards for measuring lot size were intended to be used in the home occupation ordinance calculations, and that it is the custom to calculate that as including to the center line of the road. She said there is a lot of discussion about how to measure those areas in the rural area and that's why it was written the way it was. If this board wanted to change that and exclude right-of-ways, dedications, or easements, then they need to clarify that and have it put on a potential work session next year.

Stuart said for him it came down to what was the question he was being asked. A question of fact, law, or applying the facts to the law? He said ultimately the bottom line for him was that the hearings examiner did a thorough examination of the lot area, even including the right-of-way. He said the hearings examiner did his work to figure out what it looked like and what the size was and did that determination based on including staff's arguments and still found that the lot size was too small. Stuart said he agreed with the hearings examiner and felt he did an adequate analysis in figuring out the size of the lot, even given the easements that were granted.

Boldt said he concurred with Commissioner Stuart. He said he felt the hearings examiner had done his job and agreed with his determination.

Morris stated that you only get to the correctness of the facts depending on how you interpret the code. She said the intent of setting a minimum lot size at 2½ acres for a major home occupation was because there are a number of parcels in the rural area that are much smaller than that and the board decided that it would be impossible to deal with all of the mitigation necessary for a major home occupation permit on anything less than 2½ acres. That board was also not intending that there be a separate way of calculating 2½ acres for the purpose of rural home business occupations than there was for measuring the dimensions of a regular rural lot. She said the board makes decisions that do lead to interpretation of code and by their decisions they instruct staff the way they want them to interpret. She said that by virtue of this, a number of parcels that have been considered legal no longer would be. She said those are the long-term ramifications.

Boldt agreed. He said he believed they should use the right-of-way; however his personal opinion was that they should clear it up in the code and then they can go back and use the right-of-way.

Morris said but between now and then they can't. She said the ramifications are not simple.

Stuart disagreed that the ramifications would be that right-of-way is being excluded. He said the hearings examiner said it very specifically, the key consequence is legal. The code provides

for a 2½ acre minimum and the applicant doesn't have it. The hearings examiner also did an analysis that included the right-of-way, even using the 10% variance, said it was still too small. Stuart said that clearing up the code was a great idea.

Morris said that is a great idea. However, the issue on the size of it has to do with both footage along 219th and that along 192nd, which is a private road. Private roads are owned by whoever owns it so either the decision about who actually owns it is clearly one that would have to be made in court. Morris said the code is intended to tell you how you measure the square footage of a lot. So if you are saying that you don't include it, then you don't include it.

There being no further discussion, **MOVED** by Stuart to uphold the Hearings Examiner's decision in the matter of Harris Metal Fab Home Occupation Appeal – APL2006-00001. Commissioners Boldt and Stuart voted aye. Commissioner Morris voted nay. Motion carried. (See Tape 290)

Morris referenced the new process for doing appeals and asked that when attorneys submit comments, to make sure they site specific exhibit numbers in their narrative, which will help the board more easily find information in the record.

BOARD OF COUNTY COMMISSIONERS

Marc Boldt/s/
Marc Boldt, Chair

Steve Stuart, Commissioner

Betty Sue Morris/s/
Betty Sue Morris, Commissioner

ATTEST:

Louise Richards/s/
Clerk of the Board

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